

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 MELISSA BASTIAN,

5 PLAINTIFF,

6 -against- Case No.:
7 13 Civ. 5972 (ALC) (GWG)

8 NEW YORK CITY DEPARTMENT OF EDUCATION,

9 DEFENDANT.
10 -----X

11 DATE: August 28, 2014

12 TIME: 10:22 A.M.

13 CONTINUED EXAMINATION BEFORE TRIAL of the
14 Plaintiff, MELISSA BASTIAN, taken by the Respective
15 Parties, pursuant to a Court Order and to the Federal Rules
16 of Civil Procedure, held at the offices of New York City
17 Law Department, 100 Church Street, New York, New York
18 10007, before Joshua B. Edwards, RMR, CRR, a Notary Public
19 of the State of New York.

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1 A P P E A R A N C E S:

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3 THE LAW OFFICE STEVEN A. MORELLI, P.C.
4 Attorneys for the Plaintiff
5 1461 Franklin Avenue
6 Garden City New York 11530
7 BY: JOSH BELDNER, ESQ.

6

7 ZACHARY W. CARTER, ESQ.
8 CORPORATION COUNSEL
9 NEW YORK CITY LAW DEPARTMENT
10 Attorneys for the Defendant
11 100 Church Street
12 New York, New York 10007
13 BY: SEAN RENAGHAN, ESQ., Assistant Corporation
14 Counsel
15 DONALD C. SULLIVAN, ESQ., Assistant Corporation
16 Counsel
17 File #: 2013-041435
18 Control #: DDD12522

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M. BASTIAN

1 was in the cafeteria and school aides are usually assigned
2 to the cafeteria. And he would often tell the school aides
3 do this, do that, very rude, very unprofessional, never
4 with any respect, treating them like human beings, being
5 extremely rude.

6 Q. Were any of these remarks racial in connotation?

7 A. There was a time when I heard Mr. Garcia refer
8 to -- refer in conversation to another Hispanic person and
9 say, "Oh, I need to go speak to that German." I didn't
10 know what that meant. I often heard him say that but never
11 knew what "German" meant.

12 I later found out from a teacher that he would
13 use the word "German" in lieu of saying the word "black"
14 because he did not want to be revealed. He didn't want
15 anyone to know that he was -- what "German" meant.

16 So, any time you would hear him say, "Oh, there
17 go a German" or, "I am going to go after the German," that
18 was a coded word for African-American person. I found that
19 out from a woman who is now retired. She just retired this
20 past June, named Cespedes.

21 Q. Excuse me. Could you spell that for the Court
22 Reporter.

23 A. Yes, C-E-S-P-E-D-E-S. She is the one who made me
24 aware of that, because I had asked her. I said, "What does
25 that word mean?" I often hear him say it, but I didn't

M. BASTIAN

1 know what that meant.

2 Q. How did she know?

3 A. He told her.

4 Q. She told you that he told her.

5 A. Yeah, yes.

6 Q. Any other discriminatory remarks?

7 A. Always something just generally condescending.

8 Q. Anything race-based?

9 A. There were many things. Right now, I can't
10 really remember because it's really just making me
11 distressed just thinking about him at this point.

12 Q. I am going to move on to our questions for today.
13 As I said, we had discussed your allegations of harassment
14 and discriminatory actions last time. Today, I want to go
15 through a couple of documents including the complaint in
16 this situation. My intent is generally not to rehash all
17 those conversations. I just want to make sure that I am
18 fully understanding your complaints.

19 A. Okay.

20 Q. I also want to discuss some damages.

21 A. Okay.

22 MR. RENAGHAN: At this time, I would like to
23 mark the complaint in this action as Defendant's
24 Exhibit A.

25 (Whereupon, the aforementioned Complaint was

M. BASTIAN

1 marked as Defendant's Exhibit A for
2 identification as of this date by the Reporter.)

3 Q. Ms. Bastian, I have handed you a document that
4 has been marked as Defendant's Exhibit A. I am going to be
5 asking you a number of questions based on this document.
6 Can you please review the document. Take as much time as
7 you like. I will be directing to you specific paragraphs,
8 but feel free to go through the entire document now and let
9 me know when you are ready.

10 A. (Perusing.) Okay, I am kind of familiar, yes.

11 Q. Do you recognize this document?

12 A. I do.

13 Q. Is this the complaint that you filed in this
14 case?

15 A. Yes.

16 Q. Did you have a chance to review this complaint
17 before it was filed with the court?

18 A. I did.

19 Q. I am going to direct your attention to page 2,
20 paragraph 2. What does "reassigned to an inferior
21 position" refer to?

22 A. "Reassigned to an inferior position" meant that I
23 was removed from the college office when Mr. Rubio arrived
24 at the school, and I was assigned to work with several
25 administrators or assistant principals. And at that time I

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1 was, the work they were giving me was work that really
2 something that should be done by a school aide. I am a
3 licensed school secretary of many, many years and it was an
4 inferior -- it was an inferior position for me to have to
5 do menial tasks.

6 Q. When did that take place?

7 A. I would say probably 2008.

8 Q. Were those the assignments we had discussed
9 previously?

10 A. I'm sorry. Refresh my memory.

11 Q. We will just move on.

12 Other than the removal from the college office
13 and being assigned to, I believe you said assistant
14 principals?

15 A. Yes, I was assigned to five assistant principals
16 where I would actually go to their office and just do
17 whatever they assigned me to do for the day. At one point,
18 I was assigned to Gilberto Garcia's office and I
19 rejected -- I went to Mr. Menegatos and told him it's not a
20 good idea I be assigned to that office because of the
21 behavior that Mr. Garcia has exhibited, and I don't think
22 that I should be working with a person who, in my opinion,
23 is a known bigot.

24 I said that to him, Why are you assigning me to
25 work with this person when I am subjected to day in and day

M. BASTIAN

1 out, not only me, but other people, very offensive and
2 disparaging remarks? That's not a good match.

3 Q. Any other assignments that you are referring to
4 in this paragraph? The "reassigned to inferior positions,"
5 is that referring to anything else other than what we just
6 discussed?

7 A. Menial tasks.

8 Q. What are those?

9 A. Oh, photocopying, shredding paper. At one point,
10 I was asked to deliver lunch to students in the safe room,
11 the suspended kids to pick up their lunch and deliver it to
12 them.

13 Q. Anything else?

14 A. Yes, scanning books.

15 Q. Anything else?

16 A. We had an assistant principal who is no longer
17 there. She was in charge of a program and one of her --
18 one of her projects was Valentine's Day where she would
19 order flowers. And I was assigned to deliver flowers to
20 students who have purchased it and other people in the
21 school, carnation flowers.

22 Q. Any other items that you can think of right now?

23 A. Accounting book receipts.

24 Q. Anything else?

25 A. Delivering, delivering correspondence to

M. BASTIAN

1 teachers.

2 Q. Anything else?

3 A. Picking up my own supplies if I needed anything.

4 There was a person in the building who was delivering
5 supplies, but never to me. I had to go and pick my own
6 supplies up all the time if I needed anything.

7 Q. Anything else?

8 A. There were other things, but I can't really think
9 right now.

10 Q. What was your title at that time?

11 A. Secretary.

12 Q. Did you have any change in pay?

13 A. No.

14 Q. Did you grieve any of these assignments?

15 A. I did not.

16 Q. Did you complain to anyone?

17 A. I complained to Mr. Menegatos. He was the
18 assistant principal at the time regarding these
19 responsibilities. I complained to the union as well, UFT.

20 Q. So, what happened with those complaints?

21 A. Mr. Menegatos did nothing.

22 Q. What about to the union?

23 A. The union did nothing.

24 Q. Why didn't you grieve?

25 A. There was a lot of animosity going on at the

M. BASTIAN

1 Mr. Fanning who told me there was a disparity of the
2 community assistants versus the school aides who have been
3 in the school for more than a decade.

4 When he entered the building in 2011, we had a
5 conversation because when I brought it up to him about
6 everything that was going on with me, he then said to me,
7 "I see what you are saying," because when I reviewed the
8 seniority list, I noticed that there were community
9 assistants of Mr. Rubio brought in were making \$10,000 more
10 than school aides in the school who were not given any
11 chance to be promoted. Majority of our school aides in the
12 school were African-American.

13 Q. You mentioned discussing this with Mr. Fanning.
14 So, are you saying that this happened, this segregation
15 took place before Mr. Fanning?

16 A. It did.

17 Q. Did it continue with Mr. Fanning?

18 A. I'm not sure what he has done in terms of trying
19 to pay equity, in terms of the school aides was still
20 there, because very few of them are there now. But at the
21 time of Mr. Rubio, we had many school aides and they have
22 all gone different ways and found different kinds of jobs.
23 I don't know what he has done in terms of pay equity.

24 Q. Not pay equity, but what you refer to as cultural
25 segregation, do you feel that has continued under

M. BASTIAN

1 Mr. Fanning's leadership of the school?

2 A. It is not -- there are still instances there.

3 It's not as blatant as Mr. Rubio. That was outright

4 blatant bigotry going on in that building. It was

5 supported by him. That's why Mr. Garcia was doing what he

6 was doing, because he knew that he was going to be

7 supported by Mr. Rubio who did absolutely nothing to stop

8 these attacks, these verbal assaults upon African-American

9 employees at A. Philip Randolph.

10 Q. Do you believe it's supported by Mr. Fanning?

11 A. No, it was supported by Mr. Rubio.

12 Q. Did this exist before Mr. Rubio?

13 A. Oh, no, no. I have been at A. Philip Randolph.

14 This is my 20th year of coming. No principal I have ever

15 worked for -- prior to Mr. Rubio was Mr. Collins.

16 Mr. Collins would in the have heard of this.

17 Q. Page 4, paragraph 12, what administrators are you
18 referring to in this paragraph?

19 A. In his position, he was responsible for the
20 hiring of administrators. Name them?

21 Q. Yes, please.

22 A. Oh, sure, Daniel Calcano, Eduardo Casares, Mayo
23 M-A-Y-O, Pepin, P-E-P-I-N, and Gilberto Garcia.

24 Q. Were any other administrators hired by Mr. Rubio?

25 A. Yes.

M. BASTIAN

1 started working at A. Philip Randolph, he brought them all
2 in with him and no one has hired since that time.

3 Q. In the community associate line?

4 A. In that line, yes, under Mr. Rubio. I do believe
5 that Mr. Fanning hired a community associate.

6 Q. Page 5, paragraph 15, if I can direct your
7 attention. What secretarial responsibilities are you
8 referring to there?

9 A. In my capacity as a pupil accounting secretary,
10 there are functions that, if you are not licensed, the
11 Department of Education do not allow you to do. You are
12 supposed to have a license to -- because that's
13 confidential information. I work in a system called ATS,
14 Automate The Schools. And that's throughout the entire
15 system. There's a lot of confidential information on those
16 screens.

17 And the Department of Ed allows, only allowed
18 licensed people to work with that system. There were
19 community assistants doing partial -- partial tasks that
20 belonged to me, people accounting secretary. It is, in
21 order to get on ATS, you need to have permission from the
22 principal because you would need a password and he would
23 have to contact -- there is a paper to be signed. A
24 signature is required and you would need to have access
25 only by principal's permission.

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1 Q. So, using the ATS system?

2 A. Using the ATS system.

3 Q. Anything else?

4 A. Being allowed into confidential information.

5 Q. Anything else?

6 A. ATS is really huge. I don't think I am
7 explaining it, like, really properly. But that's huge.
8 Once you get access to ATS, you are really into a lot of
9 stuff. And that's not supposed to be seen by everyone,
10 only licensed people, because in the event information is
11 leaked out, I could be brought up on charges for that. So,
12 that's why the Department of Education say only certain
13 people who are credentialed and licensed are supposed to be
14 doing that.

15 We had, he had his community assistants,
16 community associates working in ATS. There is also another
17 program which is the Online Suspension System. He had
18 community assistants and community associates working on
19 the OSS system. All of these systems require licensed
20 people. They are not supposed to have an unlicensed person
21 using these systems, and they were.

22 Q. Anything else?

23 A. I know Maria Norega was working in the office
24 with Mr. Menegatos with payroll. Ms. Tatiana Manrique was
25 doing payroll. Payroll, that's confidential information.

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1 You are talking about date of birth, Social Security
2 numbers, the Galaxy system. That is, you know, an
3 employee's salary, all kinds of confidential information
4 that's only supposed to be handled by someone, again, who
5 is licensed. And they were all working with these systems.

6 Q. Okay. Anything else?

7 A. No.

8 Q. Directing your attention again to page 5,
9 paragraph 15. What parties are you referring to?

10 A. Mr. Rubio often had parties in his conference
11 room. I'm not sure what they were for because I was never
12 invited to anything. And that's one of the -- one of my --
13 one of the things I had expressed to Mr. Fanning upon his
14 arrival, that there were tons of parties going on back
15 here.

16 How that conversation came up is because there is
17 a restaurant called Giovanni's. It's an Italian restaurant
18 in the Bronx where Mr. Rubio used to order a lot of food
19 from. I had gotten a call. I answered the phone in
20 Mr. Fanning's office from 12:00 to 1:00. There was calls
21 that were coming in -- and I screen all his calls -- from
22 Giovanni's restaurant requesting payment because Mr. Rubio
23 had purchased lots of food and he had not paid for it.

24 So, I was talking to the collections department
25 at Giovanni's restaurant and I was often tell Mr. Fanning,

M. BASTIAN

1 "Oh, here is another call from Giovanni's." So, what he
2 had done is, he created a report of all the invoices that
3 were unpaid and he sent it into the office of special
4 investigations because Giovanni's continuously called him
5 demanding payment.

6 At one point, they had asked for my name and I
7 gave it to them. I just figured they wanted to know who,
8 you know, they were speaking with, so I gave my name.
9 About a week later, I received a letter in the mail from
10 collections saying that I was -- my name was going to be
11 placed in collections and I was looking at being sued
12 because I had not paid.

13 So, I immediately ran into Mr. Fanning and I
14 said, "What is this?" And he said, "I know. I got the
15 same letter, too." He said what happened was because you
16 answered the phone and you gave them your name, they put
17 your name into collections because they are trying to
18 recoup the money from anybody, anybody who they think may
19 have had some knowledge regarding this.

20 It was thousands of dollars of food that he had
21 purchased from Giovanni's. And that's how that
22 conversation came up regarding the parties, because there
23 was always food coming from that restaurant going into his
24 back office.

25 Q. Were any African-Americans invited to these

M. BASTIAN

1 parties?

2 A. I don't know; I'm not sure.

3 Q. When you say "school-sponsored," how do you know
4 they were sponsored by the school?

5 A. I don't know if they were school-sponsored. I
6 think it's probably the principal's party. It's it not a
7 school-wide thing. I would often see many of his friends.
8 I call them his friends, although they are employees,
9 always coming from the back office with plates of food.

10 A couple of times, some of the school aides would
11 tell me -- Ms. Hernandez, she's now retired -- she would
12 say, "Go get something to eat." I would say, "No, I was
13 not invited to that." So, and it was obvious that it was
14 only certain people who were invited to his parties.

15 Q. But Ms. Hernandez told you to go join in at some
16 point?

17 A. She told me to join in.

18 Q. Moving on to page 5, paragraph 16, who
19 transferred you to the pupil records room?

20 A. Who?

21 Q. Yes.

22 A. Mr. Menegatos.

23 Q. When was that?

24 A. I guess around 2008.

25 Q. What do you mean when you say your office was

M. BASTIAN

1 A. No.

2 Q. Paragraph 19 on page 6.

3 A. (Perusing.) Yes.

4 Q. When was this, this transfer to the records room?

5 Oh, was that 2008? I'm sorry.

6 A. Yeah.

7 Q. Who transferred you to the records room?

8 A. Mr. Menegatos.

9 Q. When you say you were still expected to work for
10 the assistant principals, is that the work that you had
11 just discussed?

12 A. Yes. He created a schedule for me where I would
13 work some hours in records and I would work still assisting
14 assistant principals. He didn't offer it to me. I was --
15 we had returned back to school after summer vacation. They
16 didn't really, like, know what to do with me.

17 They just, they had me really sitting down for a
18 couple of weeks, absolutely doing nothing. And then he
19 said, "Oh, I found a job for you." And then I said, "Oh,
20 that's nice." And then he said, "Yeah, you are going into
21 the records room."

22 Q. On page 6, paragraph 21, you say that you were
23 forced to work in the records room. What do you mean by
24 that?

25 A. By "force"?

M. BASTIAN

1 (Whereupon, a brief recess was taken.)

2 Q. All right, we are back on the record.

3 A. Okay.

4 Q. Ms. Bastian, do you recognize this document that
5 has been marked as Defendant's Exhibit D?

6 A. Yes.

7 Q. Can you tell me what it is.

8 A. It's a complaint that I made at OEO in regard to
9 my complaint of illegal hiring of school counselors.

10 Q. Can you please review the paragraph marked
11 "explanation."

12 A. Read it?

13 Q. To yourself, if you can please review it.

14 A. Oh, yes, I have read it.

15 Q. Is everything in that paragraph accurate?

16 A. Yes.

17 Q. I just have a question. I believe in here,
18 paragraph 22 refers to -- let me see if can I locate
19 exactly -- so, here at the beginning, says in early fall,
20 you presented your cover letter or résumé to Mr. Rubio; is
21 that correct?

22 A. Yes.

23 Q. However, I believe your complaint says --

24 A. July.

25 Q. -- in July?

M. BASTIAN

1 A. Yes. That's an error, sorry.

2 Q. Which one is an error?

3 A. Fall.

4 Q. So, it was July?

5 A. It was in the summertime because I was working
6 summer school.

7 Q. So, it would have been July or August of 2009?

8 A. It was July.

9 Q. Was this a discrimination complaint?

10 A. Yes.

11 Q. And this was filed in May of 2012, correct?

12 A. Yes.

13 Q. So, this was after that "grits" comment by
14 Mr. Garcia, correct?

15 A. Yes.

16 Q. But you didn't include that in this complaint?

17 A. I did not include that in the complaint. When I
18 was called down by Ms. Ajibade, the attorney that
19 interviewed me, I discussed that "grits" comment with her.
20 But she seemed to know about it and I remember I had not
21 reported it on the online. She was very much aware of it
22 in my explanation of it to her. So, I believe that it was
23 reported to her by the principal.

24 Q. But you hadn't named Mr. Garcia in this
25 complaint; is that correct?

M. BASTIAN

1 A. I had not because this had to do with the hiring.

2 Q. Did you ask her to make Mr. Garcia part of this
3 complaint at your interview?

4 A. Regarding the hiring or regarding the grits?

5 Q. Regarding anything.

6 A. Regarding the grits, I did.

7 Q. So, you asked her to make him part of this
8 complaint?

9 A. Oh, yes.

10 Q. And what did she say?

11 A. She said she would.

12 Q. Do you know if that happened?

13 A. I'm not sure. She mentioned that there were many
14 complaints from -- when I filed this complaint, I had
15 gotten a call the very next day from Mecca Santana. She's
16 the director of OEO. The very next day, I was very
17 surprised to hear from someone so quickly.

18 And she said, "I read your complaint and I called
19 you immediately," because she said this school has a high
20 volume of complaints coming in to the OEO. And A. Philip
21 Randolph is on the hot seat with this department. And I
22 just wanted to know, speak to you further to find out,
23 like, more about this complaint that you just put in.

24 And so, A. Philip Randolph was already on the
25 radar with OEO. While on the phone with her, I did mention

M. BASTIAN

1 the "grits" comment. And she said, "Okay, when you come
2 down here, because I am going to have Victoria" -- Victoria
3 Ajibade, she's the attorney who interviewed me -- she said,
4 "Discuss all that with her."

5 Q. Did you discuss that with her?

6 A. Yes, yeah. In my discussion with her, she knew
7 about it already.

8 Q. Do you know what the result of that what?

9 A. Of?

10 Q. Of bringing up Mr. Garcia. Do you know if there
11 was ever a substantiated complaint against him because of
12 this?

13 A. Regarding the "grits," solely?

14 Q. Yes.

15 A. No.

16 Q. No, you don't know?

17 A. No, I don't know if anything. But she did say to
18 me that, "We have a lot of stuff on him, so we are just
19 piling everything together."

20 Q. Who was "she"? Who are you referring to?

21 A. Ms. Ajibade, the attorney said, "There have been
22 many complaints that this office has received about
23 Mr. Garcia, and we are just making a file and compiling
24 everything on him."

25 Q. Do you know what the result of this investigation

M. BASTIAN

1 was?

2 A. She submitted this, transferred it to OSI. She
3 said, "This is not an OEO complaint" because she asked,
4 "Did he say and use any derogatory terms like the word
5 'nigger'? Did he say anything in that vein?"

6 And I said, "No, I have never been called a
7 nigger." But you don't need to be called a nigger. The
8 behavior is enough. So, she then transferred it to OSI.

9 MR. RENAGHAN: Can I ask you to mark this
10 Defendant's Exhibit E.

11 (Whereupon, the aforementioned document was
12 marked as Defendant's Exhibit E for
13 identification as of this date by the Reporter.)

14 Q. Ms. Bastian, I handed you a document marked
15 Defendant's Exhibit E. Can you please quickly review that.

16 A. Yes (perusing). I have.

17 Q. What is this document?

18 A. This is a document written by Sonia Burke. Sonia
19 Burke is the only assigned bilingual school counselor at
20 A. Philip Randolph.

21 Q. How did you come to possess this document?

22 A. She submitted it to me.

23 Q. Did you ask for it from her?

24 A. I did not.

25 Q. Why did she give it to you?

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1 A. She knew of my complaint regarding the hiring of
2 school counselors and she wanted me to be aware of the
3 different incidents that were going on regarding this,
4 because I did inform her that -- she knew of my complaints.

5 Q. So, she gave this to you unsolicited?

6 A. Yes.

7 Q. What did you do with this document?

8 A. I held on to it.

9 Q. Did you give this to anyone?

10 A. My attorney.

11 Q. Did you give it to anyone else?

12 A. No.

13 MR. RENAGHAN: Can I have this document
14 marked as Defendant's Exhibit F, please.

15 (Whereupon, the aforementioned document was
16 marked as Defendant's Exhibit F for
17 identification as of this date by the Reporter.)

18 Q. Ms. Bastian, I am handing you a document marked
19 Defendant's Exhibit F with the number 111 at the bottom
20 (handing).

21 A. Yes.

22 Q. Can you please review that.

23 A. Oh, sure (perusing). Okay.

24 Q. Do you recognize this document?

25 A. I do.

M. BASTIAN

1 Q. What is it?

2 A. It's an e-mail written by Sonia Burke to
3 Mr. Fanning, and he responding to her.

4 Q. Did Ms. Burke give you this?

5 A. Yes.

6 Q. Did you ask Ms. Burke to send you this e-mail?

7 A. No.

8 Q. When did she give you this?

9 A. Are you referring what date?

10 Q. Yes. I believe there is a date at the top.

11 A. She gave it to me, I guess soon after the
12 occurrence occurred.

13 Q. Why did Ms. Burke send this to you?

14 A. Ms. Burke knows of my situation. She wanted to
15 keep me abreast of what was going on.

16 Q. What did you do with this e-mail once you
17 received it?

18 A. I held on to it and I referred it to my
19 attorney's office.

20 Q. Did you give it to anyone else?

21 A. No.

22 Q. So, this was also unsolicited?

23 A. Yes.

24 Q. All right. I am going to refer back to your
25 complaint, if you will. On page 12, paragraph 44, when you

M. BASTIAN

1 say that, "None of these counselors position were listed in
2 the Open Market system," what is your basis for that
3 belief?

4 A. I would have to go back to --

5 Q. Sure. If you are unclear what that is referring
6 to, feel free to read the earlier paragraphs.

7 A. Every year, Open Market opens on April, like,
8 April 15th, sometime around there, and it usually closes on
9 August 7th or 8th. And I am always on Open Market looking,
10 looking, looking, searching for a position. So, I am
11 constantly on it. I didn't see anything on Open Market,
12 advertisement position for A. Philip Randolph High School.

13 Q. Is it possible you missed it?

14 A. Yeah, that's a possibility I could have.

15 Q. I am going to now refer you to page 14, paragraph
16 50. If you could please just review.

17 A. (Perusing.) Yes, I have.

18 Q. What is the basis for your belief that these job
19 listings are not required to be posted for an employee
20 returning from maternity leave?

21 A. This is referring to Altagracia Ramirez being on
22 maternity leave and returning. Mr. Fanning posted this
23 position while she was still on maternity leave, and I
24 applied for it. After I applied, the very next day,
25 because there is a confirmation, the very next day it was

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1 removed from the Open Market. And also, there is a history
2 online that shows all schools applied to. That was removed
3 from my log.

4 So, I went to Mr. Fanning and I said, "I saw -- I
5 noticed that you posted a position." And he said, "Yes,
6 that's for Ms. Ramirez. She's on maternity leave." And I
7 said, "But I am not -- I didn't know that when a person is
8 on maternity leave, you needed to repost -- repost the
9 position for a person on maternity. I thought that was for
10 a new position that you just opened."

11 And he said, "No, that's for her to come back."
12 And I said, "I have never heard of that before." So, I
13 then went and spoke to the union about it. Actually, I
14 spoke to Mayra Cruz. And Mayra Cruz, District 6 rep said
15 she has never heard of that before. When an employee is on
16 maternity leave, the employee just comes back into the
17 position.

18 I then went to the school-level UFT person. I
19 said the same thing to her and she said she's never heard
20 of that, either. So then she went into, upon my request,
21 to Mr. Fanning and asked, because it needed to come from
22 the UFT. I need it to be an official statement from her,
23 not him to me. And she said that's what he said, the same
24 thing, that he posted her position because she was on
25 maternity.

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1 Q. Do you believe he was lying about that?

2 A. I don't know. It could be true. Maybe that's a
3 policy. I don't know every policy. It seemed weird to me
4 that if a person is on maternity or on any kind of a leave
5 and the person is not ready to come back to work, then all
6 our jobs are posted.

7 Any time a person leaves for any whatever,
8 sickness, maternity, childcare, whatever the case is, that
9 means the job -- then the job is then posted because if it
10 can work this way for her, that means it would have to work
11 for everybody if that's the policy.

12 Q. I believe you had said before that you didn't
13 believe that Mr. Fanning had discriminated against you; is
14 that correct?

15 A. I did.

16 Q. Do you still believe that?

17 A. The word "discrimination," I am looking at the
18 word "discrimination" in terms of ethnic, an ethnic status
19 situation. With this, it seems odd to me this is the
20 policy.

21 Q. So, let's back up a little bit. So, if you could
22 review paragraphs 48 through 54.

23 A. (Perusing.) Mm-hmm, yes.

24 Q. The guidance counselor position referred to in
25 these paragraphs --

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1 A. Yes.

2 Q. -- do you believe that that was discriminatorily
3 denied to you?

4 A. I have to say I don't think it was
5 discriminatorily denied to me. I find the practice to be
6 unusual. I don't understand it. I have never heard of it.

7 Q. Okay.

8 MR. RENAGHAN: Off the record.

9 (Whereupon, an off-the-record discussion was
10 held.)

11 MR. RENAGHAN: We are back on the record.

12 Could you please mark this as Defendant's
13 Exhibit G.

14 (Whereupon, the aforementioned Response to
15 the Defendant's Discovery Demands was marked as
16 Defendant's Exhibit G for identification as of
17 this date by the Reporter.)

18 Q. All right, Ms. Bastian, I am handing you a
19 document that has been marked as Defendant's Exhibit G. If
20 you could review that.

21 A. Okay (perusing).

22 Q. Have you reviewed the document?

23 A. I did. I skimmed it.

24 Q. Do you recognize this document?

25 A. Yes.

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1 has a habit of doing this and he cannot do this to me.
2 Maybe other people are going to allow it, but I am not
3 because this young man had a habit of running around and
4 calling African-American teachers and other staff members a
5 nigger.

6 Q. So, could we back up and could you explain what
7 happened in the first place with this event.

8 A. That's how it started with that. How it start
9 from the beginning?

10 Q. Yes, please.

11 A. Okay. I was assigned to work in the guidance
12 department. He wanted to leave the building to go outside.

13 Q. Who does "he" refer to?

14 A. Oh, the student, okay. I would check on the
15 computer to see the students -- there was a time when
16 students were able to go outside, which is now stopped.
17 Students are no longer allowed to go outside for lunch. He
18 wanted me to give him a pass because I was, like, doing
19 reception in guidance. He wanted me to give him a pass to
20 leave the building, because that's the only way school
21 Safety will allow students to leave the building.

22 After looking him up, I saw that was not his
23 lunch period and he was not allowed to leave the building.
24 Further than that, he was not a senior. Only seniors were
25 given those privileges. He got upset with me and that's

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1 when he called me that. So, and there was a person there,
2 too, Ms. Canon.

3 Q. By "that," you mean the comment on page 6?

4 A. Yes, yes.

5 MR. BELDNER: Just put on the record.

6 Q. If you wouldn't mind reading for the record.

7 MR. BELDNER: Just read it into the record,
8 the comment that he called you.

9 A. He called me a stupid fucking nigger. I got very
10 angry. I went looking for Mr. Garcia and told him because
11 Mr. Garcia was the assistant principal of security and
12 suspensions. Once I found him, I said, I told him what
13 happened. He in his usual way laughed it off like, oh.
14 It's not "oh." You need to do something about him.

15 So, a day went by; nothing. Another day when by;
16 nothing. So, I said, "Are you going to do anything about
17 suspending him?" Now, I found out from other people in the
18 school that he was accustomed to doing this. So, when I
19 demanded that he be suspended, some of the other
20 African-Americans that he had made derogatory terms with
21 were like, yeah, I am glad you are doing something about it
22 because every time we go to Garcia, he does nothing, okay.

23 So finally, when I said to him, "If you do not
24 suspend him, if you do not take my report, I am going to
25 personally take the day off, I am going downtown to the

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1 Tweed Building myself and I am going to log this in myself.
2 He is not going to come around saying this and you laughing
3 it off. It's going to stop."

4 So, a couple of days later, poof, I gave him --
5 he already had my write-up. I get an e-mail.

6 Q. You gave it to whom?

7 A. I gave it to Mr. Garcia or -- all referrals had
8 to go to Mr. Garcia. He will then review it and take the
9 action that needed to be taken according to the infraction.
10 I then -- huh?

11 Q. You can keep going, sorry. I don't want to cut
12 you off. Please continue.

13 A. I said to him, "I am not looking for you anymore.
14 This is the last time I will look for you. If you do not
15 enter this into OSS and suspend him, I will personally take
16 the day off from work, I will go down to the Tweed Building
17 and I clock this in with the Chancellor's Office and they
18 will listen to my complaint because this is ridiculous."

19 That is one of the reasons why the kids were
20 acting up and the kids felt so compelled to disrespect
21 African-American teachers and other staff members, because
22 the adults were doing it. It was being allowed by the
23 principal. It was being allowed by Mr. Garcia, so they
24 felt compelled to do the same thing. These are children
25 disrespecting adults.

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1 So, he then sent me an e-mail and he was
2 suspended for five days. But I soon found out he was in
3 the safe room and he didn't even go -- he didn't even
4 appear for his whole five days. I think he appeared for
5 one day because one of the school aides who was in charge
6 of the safe room told me, "J" never showed up but for one
7 day, even though he was supposed to be under suspicion.

8 I told Mr. Calcano. Mr. Calcano was the
9 assistant principal of -- he was not the head of security.
10 He was a dean. Mr. Calcano was a dean at the time. So,
11 13, there is -- 13 needs to be adjusted. Mr. Calcano is
12 not the head of security. He was a dean at the time. It
13 says, "And was head of security and in charge of student
14 discipline." He was the dean assigned to this case.

15 After he was suspended, the protocol is now the
16 parent needs to -- a meeting needs to be held with the
17 parent. So, Mr. Calcano approached me and said that he was
18 trying to get the mother to come in. However, the mother
19 didn't speak English and that he needed to get an
20 interpreter and that it's going to take a couple of days.

21 So, days went on and on and on before she came
22 in. When they were finally able to get her -- okay, let me
23 go back a little bit. In discussion with Mr. Calcano with
24 this, he says to me, "Oh, he didn't mean it like that." I
25 said, "He didn't mean it like that? I don't understand."

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1 Ms. Stallone's case?

2 A. I don't know.

3 Q. Do you know if Mr. Paikin had to insist?

4 A. No. I am more friendlier with Mr. Paikin than
5 she is, and he told me he did not have to insist.

6 Q. He told you he didn't have to insist?

7 A. Yes, it was taken immediately.

8 Q. Do you know how long?

9 A. No, I don't know.

10 Q. Other than that, do you have any other reason to
11 believe that their handling was based on race?

12 A. No.

13 MR. RENAGHAN: Could you please mark this as
14 Defendant's Exhibit H.

15 (Whereupon, the aforementioned document was
16 marked as Defendant's Exhibit H for
17 identification as of this date by the Reporter.)

18 Q. Ms. Bastian, I am handing you a document marked
19 Defendant's Exhibit H. It's also numbered 311 on the
20 bottom.

21 A. Yes.

22 Q. Do you recognize this?

23 A. Yes, I do.

24 Q. What is this document?

25 A. This is a referral that I had written regarding a

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1 the student who --

2 Q. So, is this in regard to the comments we just
3 discussed?

4 A. Yes, it is.

5 Q. Ms. Bastian, going back to Defendant's Exhibit G
6 on page 6, we just finished going through subparagraph 13.
7 Subparagraph 14, you refer to other items. Beyond what we
8 have discussed here today and previously in this
9 deposition, are there any other actions that you believe
10 were discriminatory --

11 A. I can't say.

12 Q. -- that you can recall at this time?

13 A. I can't give specific events, but it was just the
14 overall tone. Just in speaking, Mr. Garcia, just in
15 speaking to certain staff members, it was just so obvious.
16 He was just so blatantly disrespectful and rude.

17 And then if you walk into an office, you can see
18 the love he shared for the Hispanics, kissing, always "mi
19 amour," "mi amour," "my love," hugging, ordering food. And
20 you would always see the African-Americans just not being
21 part of anything, just not -- I am trying to describe it
22 the best way that I know how to -- like, not fitting in,
23 not being inclusive of the community.

24 At any point, you can walk by an office and
25 Mr. Calcano, Mr. Garcia and you would see at least 15

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1 people. And everybody's always Hispanic. You would never
2 see anyone African-American in the office. They would be
3 talking. There would be eating going on. You never, ever
4 see African-Americans being invited or being inclusive.

5 Q. Did you ever go to lunch with any Hispanics or
6 Dominicans at the school?

7 A. No.

8 Q. Never?

9 A. To lunch outside the building?

10 Q. Or inside the building, did you ever have lunch
11 with them?

12 A. No.

13 Q. Never?

14 A. Never. The only time, if it was something, say,
15 like, say if someone was retiring, if something happened
16 like that and then it was, like, a department-something and
17 we all went, just like, no, not on a daily basis.

18 Q. Not on a daily basis or -- so, other than those
19 events that you were just referring to, did you ever have
20 lunch on your own with Hispanics within the building?

21 A. No.

22 Q. What about breakfast? Did you ever invite any
23 Hispanics in the building to have lunch with you?

24 A. No.

25 Q. Did you ever invite them to have breakfast with

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1 you?

2 A. No.

3 Q. Other than the actions that we have discussed
4 throughout this deposition, are there any other
5 discriminatory actions that you feel were taken against you
6 that you can recall?

7 A. Yeah. I am part of the pupil -- okay, guidance
8 or pupil personnel office. And that's a title, but under
9 that, I think I discussed this before, falls attendance,
10 falls guidance, falls records, falls the programming
11 office. There is attendance, programming, records and
12 pupil accounting.

13 There have been several occasions where
14 Mr. Calcano have purchased T-shirts and sweatshirts with
15 A. Philip Randolph's name on it and a picture of the
16 school, because Mr. Fanning instituted something on Friday
17 where he wanted everyone to be like a community, everybody
18 dress up with the A. Philip Randolph, something with a logo
19 on it and it's usually a T-shirt or a sweatshirt.

20 I fell under the pupil personnel services
21 department. I am never invited or offered a T-shirt or a
22 sweatshirt. I see other people, and yes, there are some
23 African-Americans in that department who have -- but then I
24 also see people who are not in that department. It is
25 understandable people in the guidance department would

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1 have, but then I see other people like the community
2 assistants who are not part of that department who he has
3 purchased T-shirts for and sweatshirts, and they don't fall
4 under that department. But I do, but I am not offered a
5 T-shirt or a sweatshirt. I don't know if it's clear.

6 Q. When did this take place?

7 A. Last year, twice.

8 Q. Were any African-Americans given these shirts?

9 A. Yes, there were African-Americans in the guidance
10 department that were given shirts. But however, the
11 community assistants who are friends to Mr. Calcano, they
12 get a T-shirt, but they are not part of guidance. So, if
13 anybody should be getting that T-shirt, it should be me.

14 And another person that I know, two other people
15 who were always excluded is Sonia Burke and Florence
16 Grosvenor. We are part of that department and we are never
17 invited to get a T-shirt, a sweatshirt or any of the events
18 that go on in that department. G-R-O-S-V-E-N-O-R, Florence
19 is her first name, and Sonia Burke.

20 Q. On what basis do you think this is
21 discriminatory?

22 A. I see it as being discriminatory regardless of
23 the fact that there are other African-Americans in that
24 department, just two others who have received -- but then I
25 see, because of the fact that they are outside people who

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1 are all Hispanic who keep receiving these items.

2 Q. You believe this was discriminatory based on
3 race?

4 A. I do, yeah, because if you are going to offer
5 people who are not in your department, you should be
6 offering people who are in your department first.

7 Q. Who do you believe discriminated against you?

8 A. Daniel Calcano.

9 Q. Anyone else?

10 A. No, because he is in charge of this.

11 Q. Is there any other reason why you think this is
12 based on race?

13 A. I think it's based on race because I, Ms. Burke
14 and Ms. G are all African-American.

15 Q. Any other reason?

16 A. They don't like us.

17 Q. Any other reason?

18 A. No.

19 Q. Other than that action and the other actions that
20 we have discussed previously, are there any other
21 discriminatory actions that you are claiming in this case?

22 A. No.

23 Q. Other than the statements and events that we have
24 discussed previously, are there any other statements and
25 events that you are claiming created a hostile work

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C E R T I F I C A T E


STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

I, JOSHUA B. EDWARDS, a Notary Public for and
within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given by that
witness.

I further certify that I am not related to any
of the parties to this action by blood or by marriage and
that I am in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto set my hand
this 30th of August 2014.



JOSHUA B. EDWARDS, RMR, CRR

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